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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/716,241	11/18/2003	Scott F. Timmons	RESINC-0004-US	6733

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EXAMINER

MARCANTONI, PAUL D

ART UNIT PAPER NUMBER

1755

DATE MAILED: 08/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/716,241	Applicant(s) TIMMONS, SCOTT F.	
	Examiner Paul Marcantoni	Art Unit 1755	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-122 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-122 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-122 are rejected under 35 U.S.C. 102(a and b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Comrie '668, Ko '819 B1, Sobolev et al. '289 B2, Day et al. '647 B1, Classen et al. '738 B1, Fu et al. '489 or '513, Beckham et al. '738, *Sun et al. (CN 1381417), Yamazaki et al. (JP 2003321676), Jin (CN 1346813), Gu (JP '621), Wu (CN 1332215), Jun (KR '360), Chen et al. (CN 1311171), Han (KR '019), Kim (KR '099), Lee et al. (KR '536), Jiang (CN 1274693), Janotka et al., Niepelova et al. (SK 279524), Gomes (BR 9606112), Zhang (CN 1152557), Yamamoto (JP '066), Han et al. (CN 1081426), Popovici (RO 102026), Haruna (JP 04097934), Xia (CN '830), Paschenko et al., Kozlova et al. (SU 1392045), Dolezsai et al. (DE 3339197), Sumitomo (JP 56120557), or Royak (SU 278511).*

Note : All italicized references are only one page abstracts.

All the above cited references teach a cementitious composition meeting the limitations as those set forth by applicants in their claimed invention.

Comrie teaches a composition comprising dicalcium silicate, fly ash, and nepheline syenite (feldspathoid) thus anticipating the instant invention (see claim 1).

Ko teaches a composition comprising binder, Ca sulfate, slag, zeolite, and fly ash (see claims) thus anticipating the invention.

Sobolev et al. teach a composition comprising zeolite, pozzolan, and fly ash (see claims 20-24, for example, in col.11).

Day et al. teach a cement composition comprising zeolite. Zeolite is also a pozzolanic material and applicants do not distinguish between the two so it reads upon both the zeolite component and pozzolanic material. Further, cement contains a CaO component as most hydraulic cements are calcium aluminosilicate cements such as Portland cement.

Classen et al. teach a CaO containing cement comprising zeolite and again, zeolite is pozzolanic and meets the limitation of pozzolanic material.

Fu et al. patents teach a composition comprising at least one material (which means it can be more than one material) including zeolite, blast furnace slag, fly ash, silica fume, rice hull ash, and metakaolin (see claim 3 and claim 1 of patent '489, for example).

Beckham et al. teach a composition comprising zeolite and a CaO component. Again, zeolite reads upon both pozzolanic material and zeolite itself (see claims).

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Sun (CN '417) teach a composition comprising Portland cement clinker (CaO source), gypsum (Ca source), slag (also Ca source and pozzolanic), and zeolite (see abstract).

Yamazaki (JP '676) teach a composition comprising zeolite and fly ash. Note that fly ash inherently contains a CaO component as part of its overall composition and thus meets the limitation of an alkaline earth metal or Ca containing material as well as pozzolanic material.

Jin (CN '813) teach a composition comprising cement (Ca source), fly ash (Ca source and pozzolanic), slag, and zeolite (see abstract).

Gu teach a composition comprising cement and even teaches zeolite present and that is pozzolanic (see abstract).

Wu teach cement plus at least one or more of slag, zeolite, or fly ash.

Jun (KR '360) teach a composition of fly ash, zeolite and cement.

Chen et al. (CN '171) teach a composition that is added to cement (Ca source) containing diatomite (pozzolan), and zeolite.

Han (KR '019) teach a composition comprising cement (Ca source) and zeolite which is also pozzolanic in nature.

Kim teach a composition comprising fly ash, slag, and zeolite as well as gypsum which is also a Ca source.

Lee KR '536 teach a composition of Portland cement, natural zeolite, and Ca chloride.

Jiang CN '693 teach a composition of fly ash, Ca hydroxide, CaO, and zeolite.

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Janotka et al. teach a composition of cement and zeolite.

Niepelova et al. SK '524 teach a composition of slag cement and zeolite as well as fly ash.

Gomes BR '112 teach a composition of cement, slag, nepheline (felspathoid), and lime hydrate (see abstract).

Zhang teach gypsum (Ca source), zeolite, and slag (pozzolan).

Yamamoto '066 teach calcium hydroxide, diatomaceous earth, and zeolite.

Han et al. teach cement, natural zeolite, limestone (source of Ca), slag, and coal ash (same as fly ash).

Popovici teach a composition of Portland cement, slag, and synthetic zeolite.

Haruna JP '934 teach a composition of slag, metakaolin, and zeolite.

Xia CN '830 teach a composition of cement, fly ash, and zeolite.

Paschenko et al. teach a composition of Portland cement and zeolite.

Kozlova SU '045 teach a composition of cement clinker, slag, and zeolite.

Dolezsai et al. DE '197 teach a composition of cement, calcium sulfate, zeolite, fly ash, and slag.

Sumitomo JP '557 teach a composition comprising cement, synthetic zeolite, and slag or fly ash.

Royak et al. SU '511 teach a composition of nepheline slime (feldspathic component), limestone (Ca source), and slag (pozzolan) thus anticipating the instantly claimed invention.

Even if not anticipated, overlapping ranges of amounts would have been prima facie obvious to one of ordinary skill in the art.

Claims 1-122 are rejected under 35 U.S.C. 112, second paragraph, as failing to set forth the subject matter which applicant(s) regard as their invention.

The applicants independent claims are all indefinite and their dependent claims are thus indefinite also only because they depend on these indefinite independent claims.

In claims 1, 78, and 90, the composition is indefinite because there is no distinction between "pozzolanic material", "alkaline earth metal" or "Ca containing material", and zeolite or feldspathoid. A zeolite is a pozzolanic material. It is believed the feldspathoid is also pozzolanic. Fly ash itself is pozzolanic and also contains an alkaline earth metal component of Ca so there is no distinguishing between the first and second amounts which are allegedly different components. Also, slag contains a Ca component as well so it is not distinguished from a pozzolanic material and the second compound of Ca or alkaline earth metal compound.

This problem can also be seen by looking, for example, at claim 2 which teaches natural and synthetic zeolite as pozzolanic. How do you distinguish between the pozzolanic zeolite and the alkali containing zeolite as they can be the same compound? Thus, this is indefinite. Applicants must define their claim to distinguish between these three components. If they do not, they are vague and read upon each other.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Marcantoni whose telephone number is 571-272-1373. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Bell, can be reached at 571-272-1362. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Paul Marcantoni
Primary Examiner
Art Unit 1755